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728463

APPLICATION NUMBER	FILING DATE	10/2/96	LONBERG, FIRST NAMED APPLICANT	N	ARTY DOCKET NO	0020
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10/2/96
TOWNSEND AND TOWNSEND AND CREW
TWO EMBARCADERO CENTER 9TH FLOOR
SAN FRANCISCO CA 94111

EXAMINER

ZISMA, S

ART UNIT	PAPER NUMBER
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1604 1801

08/22/97

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

Responsive to communication(s) filed on _____

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-30 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) _____ is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) 1-30 are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of Reference Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

BEST AVAILABLE COPY

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8, drawn to a method for producing a human immunoglobulin, classified in class 435, subclass 69.6, for example.
- II. Claim 9, drawn to an immunoglobulin, classified in class 530, subclass 350, for example.
- III. Claims 10-14 and 18-30, drawn to an immunoglobulin that specifically binds human CD4, classified in class 530, subclass 387.1, for example, and the hybridoma that secretes the immunoglobulin, and drawn to a cell containing artificial genes encoding at least a portion of a human immunoglobulin polypeptide, classified in class 435, subclass 240.2, for example.
- IV. Claims 15-17, drawn to a method for selecting a hybridoma, classified in class 435, subclass 7.2, for example.

The inventions are distinct, each from the other because:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed, the immunoglobulin, can be made by a materially different process such as chemical synthesis, for example.

Inventions II and III are independent and distinct inventions since the immunoglobulin of Invention II would have a different, non-naturally occurring sequence than the immunoglobulin of Invention III.

Invention IV is independent and distinct from the other inventions since Invention IV uses different starting materials, different procedures and obtains different results.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, recognized divergent subject matter and separate search requirements, restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Papers related to this application may be submitted to Group 1800 by facsimile transmission. Papers should be faxed to Group 1800 via the PTO FAX center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG (30 November 15, 1989). The CM1 official Fax Center number is (703) 305-3014 or (703) 305-4242.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Suzanne Ziska, Ph.D., whose telephone number is (703)308-1217. In the event the examiner is not available, the examiner's supervisor, Jasemine Chambers, Ph.D., may be contacted at phone number (703) 308-3153.


SUZANNE E. ZISKA
PRIMARY EXAMINER
GROUP 1800